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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140507412-5014-02]

RIN 0648-BE22

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Framework Adjustment 52

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS has approved Framework Adjustment 52 to the Northeast Multispecies Fishery Management Plan. This final rule contains two modifications to the current windowpane flounder accountability measures. First, the size of the accountability measure gear-restricted areas can be reduced if we determine that improvements in windowpane flounder stock health occurred despite the catch limits being exceeded. Second, the duration of the accountability measure can be shortened if we determine that an overage of the catch limit did not occur in the year following the overage. This action allows us to implement accountability measures based on more current survey and catch data and increases fishing opportunities for the groundfish fishery while still preventing overfishing.

DATES: This final rule is effective on [insert date of filing for public inspection in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst,
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SUPPLEMENTARY INFORMATION:

Background

The current accountability measures (AMs) for a windowpane flounder catch overage are small and large year-round gear-restricted areas (Figure 1). To trigger an AM for windowpane flounder, the overage must be greater than the management uncertainty buffer, which is currently 5 percent. If the overage is between 5 and 20 percent, the Small AM Area restriction is triggered. If the overage is more than 20 percent, the Large AM Area restriction is triggered. The AMs are stock specific. Accordingly, the AM trigger for northern windowpane flounder is based on the total northern windowpane flounder catch limit. The Southern New England AM trigger is based on southern windowpane flounder catch, but is triggered only when both the groundfish-specific and the total southern windowpane catch limits are exceeded. This is because southern windowpane flounder is allocated to scallop fishermen in addition to the catch limits that govern groundfish fishermen.

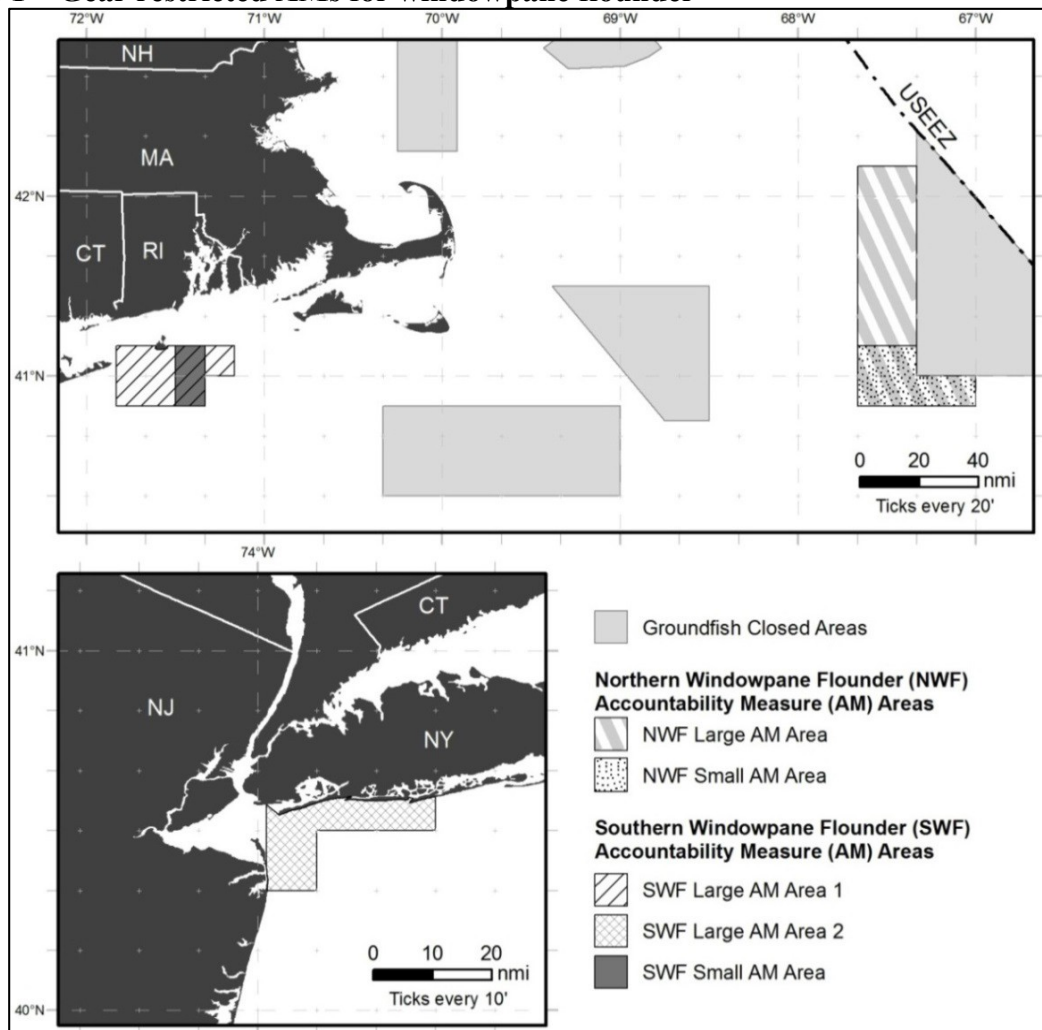
When the windowpane flounder AMs are triggered, bottom-trawl vessels fishing in the applicable Small or Large AM Area are required to use selective trawl gear, such as the haddock separator or Ruhle trawl. The windowpane flounder AMs are implemented at the start of a fishing year after an overage is identified. Neither longline nor gillnet gear are restricted because these gear types comprise a small amount of the total catch of these stocks. Sectors cannot request an exemption from the AMs, because the AMs are meant to apply to all groundfish fishing activity, common pool and sector vessels alike.

In fishing year 2012, the northern windowpane flounder catch limit was exceeded by 28 percent and the southern windowpane flounder catch limit was exceeded by 36 percent. Because both of these overages exceeded 20 percent, the large gear-restricted areas were triggered as AMs. Because the overages were not identified until mid-way through fishing year 2013, the AMs were made effective for the 2014 fishing year (starting May 1, 2014). The northern windowpane flounder catch limit was also exceeded in fishing year 2013 and, because we received this information in fishing year 2013, this triggered the same 2014 AM that was triggered due to overages in fishing year 2012.

The initial windowpane flounder AMs were approved in Framework 47 (77 FR 26104; May 2, 2012), and the accompanying environmental assessment for that action estimated the economic costs from these AMs to be as much as \$15 million. Since then, several substantial reductions in catch limits for many key groundfish stocks have made many groundfish vessels more reliant on some flatfish species, particularly winter flounder. Since winter flounder and windowpane flounder are intermixed, the windowpane flounder AMs are having a considerable adverse economic impact on the fleet. To mitigate these impacts, the New England Fishery Management Council developed Framework 52 to modify the current AMs to sufficiently account for an overage of windowpane flounder while reducing the economic costs to industry without sacrificing conservation benefits.

Additional information on the windowpane flounder AMs, including how they were developed and are implemented, can be reviewed online at www.greateratlantic.fisheries.noaa.gov/nero/regs/frdoc/12/12MulFW47FR.pdf, as well as in the final rule for Framework 47 and the proposed rule for this action (79 FR 68396; November 17, 2014).

Figure 1 – Gear restricted AMs for windowpane flounder



Approved Measures

Framework 52 modifies the current AMs for southern and northern windowpane flounder by allowing us to update survey and catch information to better determine the most appropriate AM in correlation to the conditions of the stock or whether the applicable catch limits were exceeded. Framework 52 contains two measures that would reduce the scope of the northern or southern windowpane flounder AM in size or duration if: 1) The stock is rebuilt and it can be determined that there were improvements in windowpane flounder stock health; or 2) the fishery remains within its catch limits the year following an overage. These measures are not mutually exclusive and can be used within the same fishing year. This action will help prevent overfishing and rebuild overfished stocks while reducing economic impacts, using the best scientific information available.

Reducing the Size of the AM After Analyzing Recent Survey and Catch Data

AMs are management controls to prevent annual catch limits from being exceeded and to correct or mitigate catch overages. The first measure reduces the size of the AM area restriction from large to small if two criteria are met: 1) The stock is considered rebuilt; and 2) the “biomass criterion” is greater than the fishing year catch. “Biomass criterion” is defined as the 3-year average of the catch per tow from the three most recent fall surveys multiplied by 75 percent of F_{msy} (fishing mortality at maximum sustainable yield) of the most recent stock assessment. If the biomass criterion is greater than the fishing year catch, it suggests the Large AM Area is unnecessary because the impacts of the overage on the stock may not be as substantial as originally expected. In other words, we can reduce the AM from the Large to the Small AM Area to mitigate the overage in a way that takes into account a greater biomass in relation to fishing effort.

Importantly, this scenario applies to the fishing year 2012 southern windowpane flounder overage and the current southern windowpane flounder AM, which became effective on May 1, 2014 (see page I-5 of Appendix 1 of the Framework 52 Environmental Assessment, which is available online at www.greateratlantic.fisheries.noaa.gov/regs/2014/November/14mulfw52appendixi.pdf). As a result, the southern windowpane flounder Large AM Area gear-restriction currently in place in Southern New England is reduced to the Small AM Area for the remainder of fishing year 2014 (i.e., through April 30, 2015).

Reducing the Duration of an AM In-Season if a Subsequent Overage Does Not Occur

The second measure is early removal of an AM if we determine that the fishery remained within its total catch limit the year following an overage. In addition to mitigating biological consequences, AMs should correct operational issues that cause overages. This measure seeks to use operational corrections proportional to updated fishing activity. We do not receive year-end data (from fishing year 1) for the other sub-component fisheries that catch windowpane flounder until several months into the next fishing year (year 2). If there is an overage due to this late data, we implement an AM at the start of the following fishing year (year 3). With regards to the second criterion, once we receive complete year 2 catch information in late August/early September (of year 3), if we identify that there was an underage in year 2, we would shorten the duration of an AM by removing it in-season during year 3. Because of the delay in receiving data from the other sub-components of the fishery, we would not remove the AM before September 1; therefore, the AM would remain in place for a minimum of 4 months. The shorter duration ensures accountability but also recognizes the fishery may have corrected the operational issue that caused the overage in year 1. This criterion does not apply to the current

fishing year 2014 AMs because fishing year 2013 (year 2) catch limits for both southern and northern windowpane flounder stocks were not underharvested.

The second measure also stipulates that the AM would not be removed if we determine there is a subsequent overage in year 3. A second overage in three years suggests that management measures, including AMs, should be revisited and modified, or, that whatever changes the fishery made independently in year 2 to reduce catch were ineffective in year 3, and that the AM is warranted.

Regulatory Correction Under Regional Administrator Authority

To clarify the intent of Framework 47, this rule changes the regulatory text at 50 CFR 648.90(a)(5)(i)(D)(1), 648.90(a)(5)(i)(D)(2), and 648.90(a)(5)(i)(D)(3) to clarify that a large AM area is implemented if the overage is greater than 20 percent of the overall annual catch limit. While reviewing the regulations for windowpane flounder AMs, we discovered that the regulations detailing the large and small AMs for windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish were different than approved in Framework 47. The current regulations incorrectly state that a small AM is implemented if an overage is between 5 and 20 percent of the overall annual catch limit, and a large AM is implemented if the overage is 21 percent or more. This mistakenly leaves a void between 20 and 21 percent. The Council also stipulated in Framework 48 that any overage greater than 20 percent would require a review of the AM for Atlantic halibut and Atlantic wolffish. This provision was inadvertently also added to the AMs established for windowpane flounder and ocean pout. This action removes this provision from § 648.90(a)(5)(i)(D)(1) to be consistent with Council intent. Lastly, the regulations currently state that a large AM area is implemented for both Atlantic halibut and Atlantic wolffish if the overall ACL is exceeded by more than 20 percent. This is incorrect;

there are no large or small AM areas for Atlantic halibut and Atlantic wolffish, only specific trawl and fixed gear AMs that are applied when there is an overage greater than the management uncertainty buffer.

Comments and Responses on Measures Proposed in the Framework 52 Proposed Rule

We received five comments on the Framework 52 proposed rule. Public comments were submitted by the Associated Fisheries of Maine, Northeast Seafood Coalition, and two commercial fishermen. Only comments that were applicable to the proposed measures are responded to below. Consolidated responses are provided to similar comments on the proposed measures.

Comment 1: The Associated Fisheries of Maine, Northeast Seafood Coalition, and two commercial fishermen generally support Framework 52. Two of the commenters stressed an immediate need for economic relief from the current AMs.

Response 1: We agree with these comments and are approving Framework 52. We have worked to expeditiously review and implement Framework 52 because this action will increase fishing opportunities for the groundfish fishery while preventing overfishing.

Comment 2: One individual opposes the use of AMs, particularly area closures and gear restrictions, claiming that such effort controls are an “unacceptable setback,” in a quota-controlled fishery, and that sector rules and management plans should be utilized to deal with challenges such as this.

Response 2: Ideally, the fishery would never exceed its catch limits and AMs would never be implemented. However, AMs are required by statute to account for overharvesting or to reduce the potential for future overharvests, and are necessary when the current management measures are not properly controlling catch. While sectors do not directly receive an allocation

of northern or southern windowpane flounder, we provide sector managers with current catch data for allocated and non-allocated groundfish stocks, such as windowpane flounder. Nothing is preventing sector managers and members from working together to reduce the groundfish industry's catch of windowpane flounder and prevent them from exceeding the groundfish allocation. Sectors could develop a solution to this problem and we encourage them to do so.

Comment 3: The Northeast Seafood Coalition states that Framework 52 or 53 should have included a sub-allocation of northern windowpane flounder for the scallop fishery so that groundfish fishermen are accountable only for their own catch and not a potential overage caused by scallop vessels. The Coalition argues that any fishery that contributes a substantial source of fishing mortality should have its own allocation and AM, otherwise the system is inequitable and attempts to limit catch become futile. The Coalition has asked NMFS and the Council to address this issue.

Response 3: The Council considered, but decided not to include, a separate northern windowpane flounder allocation and AM for scallop vessels in Framework 53. Recognizing that this is an issue that should be addressed, the Council has tasked the Groundfish Plan Development Team to further investigate this and additional windowpane flounder management issues.

Although we understand the Coalition's concerns, the groundfish fishery exceeded its own sub-allocation for both northern and southern windowpane flounder in fishing years 2012 and 2013. In fact, the groundfish fishery itself exceeded the total catch limit for northern windowpane flounder in fishing year 2013. So, while allocating some northern windowpane flounder to the scallop fishery and designing an AM for the scallop fishery (similar to southern windowpane flounder) may increase accountability for scallop vessels, the groundfish fishery

would still need to closely monitor and reduce its catch of windowpane flounder to avoid exceeding its allocation and potentially triggering an AM.

Comment 4: The Northeast Seafood Coalition argues that windowpane flounder AMs are triggered by mistakenly low allocations that are the result of underestimated stock sizes. The Coalition supports new assessment methods for low-value, non-commercial stocks such as windowpane flounder.

Response 4: The first component of Framework 52 is a provision that allows us to further examine the most recent survey and catch data to determine whether the stock size could have been underestimated. This action addresses part of the Coalition's concerns. Furthermore, the Northeast Fisheries Science Center will conduct a stock assessment update on windowpane flounder next year.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the management measures implemented in this final rule are consistent with the Northeast Multispecies Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Assistant Administrator for Fisheries finds good cause, under authority contained in 5 U.S.C. 553(d)(1), to waive the 30-day delayed effectiveness of this action. Delaying the implementation of this rule would undermine the purpose of the rule, which is to improve access

to fish stocks without allowing overfishing. Furthermore, any delay would reduce the economic benefit the rule provides. Accordingly, a delay is contrary to the public's interest. Moreover, the delay in this instance is unnecessary because the rule imposes no new requirements on the affected entities such that they would need time to change their behavior to comply with the rule. Because there are only 4 months left in the fishing year, a 30-day delay in implementation of these measures would substantially reduce the positive economic impacts that are intended by these measures.

Final Regulatory Flexibility Analysis

Introduction

The Regulatory Flexibility Act (RFA) requires that Federal agencies analyze the expected impacts of a rule on small business entities, including consideration of disproportionate and/or significant adverse economic impacts on small entities that are directly regulated by the action. As part of the analysis, Federal agencies must also consider alternatives that minimize impacts on small entities while still accomplishing the objectives of the rule. The required analysis is used to inform the agency, as well as the public, of the expected impacts of the various alternatives included in the rule, and to ensure the agency considers other alternatives that minimize the expected impacts while still meeting the goals and objectives of the action, and that are still consistent with applicable law.

Section 604 of the RFA, 5 U.S.C. 604, requires Federal agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for each final rule. Key elements of the FRFA include a summary of significant issues raised by public comments, a description of the small entities that will be affected by the final rule, and a description of the steps the agency has taken to minimize the significant economic impact on small entities that includes the reasons for selecting each

alternative and why other alternatives were not adopted. The FRFA prepared for this final rule includes the summary and responses to comments in this rule, the analyses contained in Framework 52 and its accompanying Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (IRFA), the IRFA summary in the proposed rule, as well as the information provided below.

Summary of Significant Issues Raised in Public Comments

Our responses to all comments received on the proposed rule can be found in the Comments and Responses section of this preamble. Four of the comments we received supported the management measures in Framework 52 because they would reduce the economic impacts of the current AMs. No public comments were received on the IRFA prepared for the proposed rule. As stated above, we are approving the management measures within Framework 52 because they mitigate the economic impacts of the AMs while preventing overfishing.

Description and Estimate of the Number of Small Entities to which the Final Rule Would Apply

A detailed description of the small entities that may be affected by this action can be found in the Framework 52 Environmental Assessment in section 8.11.2.4. Small entities include "small businesses," "small organizations," and "small governmental jurisdictions." The U.S. Small Business Administration (SBA) has established size standards for all major industry sectors in the U.S. including commercial finfish harvesters, commercial shellfish harvesters, other commercial marine harvesters, for-hire businesses, marinas, seafood dealers/wholesalers, and seafood processors.

A small business is defined by the SBA as one that is:

- Independently owned and operated;
- Not dominant in its field of operation (including its affiliates);

- Has combined annual receipts not in excess of
 - \$20.5 million for all its affiliated operations worldwide for commercial finfish harvesting;
 - \$5.5 million for all its affiliated operations worldwide for commercial shellfish harvesting; or
 - \$7.5 million for other marine harvesters, for-hire businesses, and other related entities; and
- Has fewer than
 - 500 employees in the case of seafood processors; or
 - 100 employees in the case of seafood dealers.

A small organization is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. Small governmental jurisdictions are governments of cities, boroughs, counties, towns, townships, villages, school districts, or special districts, with population of fewer than 50,000.

This action impacts commercial fish harvesting entities engaged in the Northeast multispecies limited access fishery. A description of the specific permits that are likely to be impacted is included below for informational purposes, followed by a discussion of the impacted businesses (ownership entities), which can include multiple vessels and/or permit types. For the purposes of the RFA analysis, the ownership entities (not the individual vessels) are considered to be the regulated entities.

Limited Access Groundfish Fishery

The limited access groundfish fisheries are further sub-classified as those enrolled in the sector allocation program and those in the common pool. Sector vessels are subject to sector-level stock-specific allocations that limit catch of allocated groundfish stocks. AMs include a prohibition on fishing inside designated areas once 100 percent of available sector allocation has been caught, as well as area-based gear and effort restrictions that are triggered when catch of non-allocated groundfish stocks exceeds the catch limits. Common pool vessels are subject to various days-at-sea and trip limits designed to keep catches below the limits set for vessels enrolled in this program. In general, sector-enrolled businesses rely more heavily on sales of groundfish species than common pool-enrolled vessels. All limited access multispecies permit holders are eligible to participate in the sector allocation program; however, many permit holders select to remain in the common pool fishery.

As of May 1, 2014 (beginning of fishing year 2014), there were 1,046 individual limited access multispecies permits. A total of 613 of these permits were enrolled in the sector program and 433 were enrolled in the common pool. Of these 1,046 limited access multispecies permits, 767 had landings of any species and 414 had groundfish landings in fishing year 2013.

Ownership Entities

Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the final action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ownership entities are defined as those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as

an ownership entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate ownership entities for the purpose of this analysis.

Ownership entities are identified on June 1st of each year based on the list of all permit numbers, for the most recent complete calendar year, that have applied for any type of Northeast Federal fishing permit. The current ownership data set is based on calendar year 2013 permits and contains average gross sales associated with those permits for calendar years 2011 through 2013.

Matching the potentially impacted permits described above (fishing year 2014) to the calendar year 2013 ownership data results in 868 distinct ownership entities. Of these, 855 are categorized as small and 13 are categorized as large entities per the SBA guidelines.

These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios; obtaining gross sales from many fisheries and not dependent on any one. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species impacted directly by this action are most likely to be affected. By defining dependence as deriving greater than 50 percent of gross sales from sales of regulated species associated with a specific fishery, we are able to identify those ownership groups most likely to be impacted by the final regulations. Using this threshold, we find that 114 entities are groundfish-dependent, all of which are small and all of which are finfish commercial harvesting businesses. Of the 114 groundfish-dependent entities, 102 have some level of participation in the sector program and 12 operate exclusively in the common pool.

Economic Impacts of This Action

This final rule is expected to have generally positive economic impacts, and we do not expect the action to put small entities at a competitive disadvantage relative to large entities. Impacts on profitability from this action are likely to positively affect both small and large entities in a broadly similar manner.

This FRFA analysis is intended to analyze the impacts on small entities of the alternatives described in section 4.1 of Framework 52. This action alters the criteria for triggering AMs for windowpane flounder, and may result in either smaller AM gear restricted areas (i.e., duration or size) in the Southern New England or Georges Bank gear restricted areas or an increased likelihood that a triggered AM in either/both areas could be removed in-season once catch information from the previous year is made available. These provisions are expected to positively impact profitability of small entities regulated by this action.

This action is expected to result in either a smaller gear restricted area or a lower probability of an AM remaining in place for a given year (i.e., duration or time). In all cases, this action is expected to have positive economic impacts to small groundfish-dependent entities relative to the no action alternative. A more detailed discussion of the expected economic and social impacts can be found in sections 7.4 and 7.5 of the Framework 52 environmental assessment.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Action

This action does not create any additional reporting, record-keeping, or other compliance requirements.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, we will send a small entity compliance guide to all Federal permit holders affected by this action. In addition, copies of this final rule and guide (i.e., information bulletin) are available from NMFS online at www.nero.noaa.gov/sfd/sfdmulti.html.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 8, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.90, revise paragraphs (a)(5)(i)(D)(I), (2), and (3) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(D) * * *

(1) *Windowpane flounder and ocean pout.* Unless otherwise specified in paragraphs (a)(5)(i)(D)(I)(i) and (ii) of this section, if NMFS determines the total catch exceeds the overall ACL for either stock of windowpane flounder or ocean pout, as described in this paragraph (a)(5)(i)(D)(I), by any amount greater than the management uncertainty buffer up to 20 percent greater than the overall ACL, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, consistent with the Administrative Procedure Act. If the overall ACL is exceeded by more than 20 percent, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, consistent with the Administrative Procedure Act. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Vessels fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). If an overage of the overall ACL for southern windowpane flounder is as a result of an overage of the sub-ACL allocated to exempted fisheries pursuant to

paragraph (a)(4)(iii)(F) of this section, the applicable AM area(s) shall be in effect for any trawl vessel fishing with a codend mesh size of greater than or equal to 5 inches (12.7 cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3). If an overage of the overall ACL for southern windowpane flounder is as a result of an overage of the sub-ACL allocated to the groundfish fishery pursuant to paragraph (a)(4)(iii)(H)(2) of this section, the applicable AM area(s) shall be in effect for any limited access NE multispecies permitted vessel fishing on a NE multispecies DAS or sector trip. If an overage of the overall ACL for southern windowpane flounder is as a result of overages of both the groundfish fishery and exempted fishery sub-ACLs, the applicable AM area(s) shall be in effect for both the groundfish fishery and exempted fisheries. If a sub-ACL for either stock of windowpane flounder or ocean pout is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and there are AMs for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

Northern Windowpane Flounder and Ocean Pout Small AM Area

Point	N. Latitude	W. Longitude
1	41°10'	67°40'
2	41°10'	67°20'
3	41°00'	67°20'
4	41°00'	67°00'
5	40°50'	67°00'

6	40°50'	67°40'
1	41°10'	67°40'

Northern Windowpane Flounder and Ocean Pout Large AM Area

Point	N. Latitude	W. Longitude
1	42°10'	67°40'
2	42°10'	67°20'
3	41°00'	67°20'
4	41°00'	67°00'
5	40°50'	67°00'
6	40°50'	67°40'
1	42°10'	67°40'

Southern Windowpane Flounder and Ocean Pout Small AM Area

Point	N. Latitude	W. Longitude
1	41°10'	71°30'
2	41°10'	71°20'
3	40°50'	71°20'
4	40°50'	71°30'
1	41°10'	71°30'

Southern Windowpane Flounder and Ocean Pout Small AM Area 1

Point	N. Latitude	W. Longitude
1	41°10'	71°50'
2	41°10'	71°10'
3	41°00'	71°10'
4	41°00'	71°20'
5	40°50'	71°20'
6	40°50'	71°50'
1	41°10'	71°50'

Southern Windowpane Flounder and Ocean Pout Large AM Area 2

Point	N. Latitude	W. Longitude
1	(¹)	73°30'
2	40°30'	73°30'
3	40°30'	73°50'
4	40°20'	73°50'

5	40°20'	(²)
6	(³)	73°58.5'
7	(⁴)	73°58.5'
8	40°32.6' (⁵)	73°56.4' (⁵)
1	(¹)	73°30'

¹The southernmost coastline of Long Island, NY, at 73°30' W. longitude.

²The easternmost coastline of NJ at 40°20' N. latitude, then northward along the NJ coastline to Point 6.

³The northernmost coastline of NJ at 73°58.5' W. longitude.

⁴The southernmost coastline of Long Island, NY at 73°58.5' W. longitude.

⁵The approximate location of the southwest corner of the Rockaway Peninsula, Queens, NY, then eastward along the southernmost coastline of Long Island, NY (excluding South Oyster Bay), back to Point 1.

(i) *Reducing the size of an AM.* If the overall northern or southern windowpane flounder ACL is exceeded by more than 20 percent and NMFS determines that: the stock is rebuilt, and the biomass criterion, as defined by the Council, is greater than the most recent fishing year's catch, then only the respective small AM may be implemented as described in paragraph (a)(5)(i)(D)(I) of this section, consistent with the Administrative Procedure Act.

(ii) *Reducing the duration of an AM.* If the northern or southern windowpane flounder AM is implemented in the third fishing year following the year of an overage, as described in paragraph (a)(5)(i)(D) of this section, and NMFS subsequently determines that the applicable windowpane flounder ACL was not exceeded by any amount the year immediately after which the overage occurred (i.e., the second year), on or after September 1 the AM can be removed once year-end data are complete. This reduced duration does not apply if NMFS determines during year 3 that a year 3 overage of the applicable windowpane flounder ACL has occurred.

(2) *Atlantic halibut.* If NMFS determines the overall ACL for Atlantic halibut is exceeded, as described in this paragraph (a)(5)(i)(D)(2), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented and any vessel

issued a NE multispecies permit or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, may not fish for, possess, or land Atlantic halibut for the fishing year in which the AM is implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by more than 20 percent, the applicable AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Halibut Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Halibut Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic halibut is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and there are AMs for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

Atlantic Halibut Trawl Gear AM Area

Point	N. Latitude	W. Longitude
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1	42°00'	69°20'
2	42°00'	68°20'
3	41°30'	68°20'
4	41°30'	69°20'

Atlantic Halibut Fixed Gear AM Area 1

Point	N. Latitude	W. Longitude
1	42°30'	70°20'
2	42°30'	70°15'
3	42°20'	70°15'
4	42°20'	70°20'

Atlantic Halibut Fixed Gear AM Area 2

Point	N. Latitude	W. Longitude
1	43°10'	69°40'
2	43°10'	69°30'
3	43°00'	69°30'
4	43°00'	69°40'

(3) *Atlantic wolffish*. If NMFS determines the overall ACL for Atlantic wolffish is exceeded, as described in this paragraph (a)(5)(i)(D)(3), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by more than 20 percent, the applicable AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Wolffish Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear

approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Wolffish Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic wolffish is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

Atlantic Wolffish Trawl Gear AM Area

Point	N. Latitude	W. Longitude
1	42°30'	70°30'
2	42°30'	70°15'
3	42°15'	70°15'
4	42°15'	70°10'
5	42°10'	70°10'
6	42°10'	70°20'
7	42°20'	70°20'
8	42°20'	70°30'

Atlantic Wolffish Fixed Gear AM Area 1

Point	N. Latitude	W. Longitude
1	41°40'	69°40'
2	41°40'	69°30'
3	41°30'	69°30'
4	41°30'	69°40'

Atlantic Wolffish Fixed Gear AM Area 2

Point	N. Latitude	W. Longitude
1	42°30'	70°20'
2	42°30'	70°15'
3	42°20'	70°15'
4	42°20'	70°20'

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